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No. 04-0625

Supreme Court, U.S.
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In The

Supreme Court of the United States

GERARD N. HAAS, JR.,

Plaintiff-Petitioner,

v.

STATE OF WISCONSIN, et al.,

Defendants-Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

I. The Seventh Circuit Properly Affirmed the District Court's Dismissal Of Haas' Claims On Their Merits For Failure To Allege A Constitutional Violation

Gerard N. Haas ("Haas") desires to change the relationship between a municipal court and the defendants that appear before it. In that pursuit, his prior arguments have focused on the provisions of the Wisconsin Statutes relating to municipal courts, arguing that service of a municipal citation does not constitute commencement of an action.

Haas' petition before this Court does not raise the argument that is the very heart of his case. The omission of a discussion of the municipal court's statutory authority is not an accident. For Haas to acknowledge the authority of the municipal court over municipal court matters is contrary to his argument that the municipal court lacks subject matter jurisdiction.

A. All Actions In Racine Municipal Court Were Properly Commenced Against Haas

The jurisdiction of Wisconsin municipal courts is substantial within the framework of municipal ordinance violations and other municipal law matters.

> We conclude that, once a court, including a municipal court, appropriately invokes its jurisdiction, it has the power to exercise all of its constitutional powers within the framework of that conferred jurisdiction. Thus, in the exercise of its jurisdiction in the instant case in respect to the municipal ordinance, which is unquestioned,

> it could, in fulfillment of its jurisdictional mission, invoke all judicial powers that are not specifically denied.
>
> Therefore, municipal courts, once created by the legislature and by appropriate municipal action, are courts endowed with all judicial powers not expressly denied them, which powers may be exercised in all cases that fall within their jurisdiction. We hold that the municipal court has the authority to determine the constitutionality of an ordinance that is the basis of an action brought before it.

Milwaukee v. Wroten, 160 Wis. 2d 207, 222-23, 466 N.W.2d 861 (1991).

The power of a municipal court is not limited to those specific instances where the action is authorized by statute. Rather, within the confines of municipal ordinance violations, a municipal court has significant authority. *City of Kenosha v. Jensen*, 184 Wis. 2d 91, 98, 516 N.W.2d 4 (Ct. App. 1994) ("We conclude that a municipal court has the inherent authority to vacate a void judgment irrespective of statutory requirements for reopening judgments.").

B. Upon Filing And Service Of A Citation, The Wisconsin Statutes Explicitly Confer Subject Matter Jurisdiction And Personal Jurisdiction Over Haas In The Racine City Court

Wis. Stat. § 800.01 governs the "Commencement of action" in municipal court.

> In municipal court, personal jurisdiction in municipal ordinance violation cases and cases involving a violation of a resolution or bylaw if the

> resolution or bylaw is authorized by statute is obtained over a defendant when the defendant:
>
> (a) Is served with a summons and complaint or citation and such documents are filed with or transmitted to the court;
>
> (b) Is arrested and brought before the court personally, or in the municipal court of a 1st class city, personally or through interactive video and audio transmission conducted in accordance with the rules of the 1st judicial administrative district; or
>
> (c) Voluntarily appears before a municipal judge.

§ 800.01 Wis. Stats.

Per the express language of the statute, the Racine City court acquired personal jurisdiction when Haas was served with the citation and the documents were filed with or transmitted to the court. This unequivocal statement of personal jurisdiction completely disposes of Haas' arguments regarding a lack of jurisdiction. Haas does not contend that the citations were never served on him; service is not an issue.

Haas offers no authority to support his lack of subject matter jurisdiction argument. He does not contend that he was charged with a crime, such that Racine County circuit courts would properly have jurisdiction. Indeed, he has previously emphasized the violations with which he was charged were all non-criminal in nature. He does not contend that the Racine municipal court lacked the power to try cases involving violations of Racine municipal ordinances or impose forfeitures for violating Racine municipal ordinances. Wis. Stat. § 755.045(1).

As noted by the District Court, Wisconsin municipal court judges

> have jurisdiction over municipal ordinance violations. Wis. Const. art. VII, sec. 14; Wis. Stat. sec. 755.045(1). State law empowers them to enter default judgments under Wis. Stat. sec. 800.04(2m), issue warrants and summonses under sections 800.04.(2m) and 800.095(b)1, and, in some cases, order incarceration for failure to comply under sec. 800.095(b)1.

(Pet. App. B, 23a). Throughout his petition, Haas repeatedly confuses personal jurisdiction with subject matter jurisdiction.

§ 800.04(2m) Wis. Stats. provides:

> If the defendant does not appear at the initial appearance, the court may issue a warrant to bring the defendant before the court. Upon proof of personal service of the . . . citation under s. 800.01(1), or upon proof of service of the . . . citation under s. 801.11(1)(b), the court may enter a default judgment by reason of the failure of the defendant to respond to a citation under § 800.02(2)(a). . . . If a warrant is issued for a defendant under this subsection, the defendant may be detained in jail prior to the initial appearance.

Haas concedes that he deliberately failed to appear in court or make a cash deposit. Judge Michelson properly found that Haas had entered a plea of no contest and entered judgment against Haas.

If Haas read the citations he received, he would have known that a default judgment could be entered against

him if he failed to appear. § 800.02(2)(a) reads, in salient part:

> The citation shall contain substantially the following information: [. . .] 9. Notice that if the defendant does not make a deposit and fails to appear in court at the time fixed in the citation, the court may issue a summons or a warrant for the defendant's arrest *or may enter a default judgment* against the defendant.

(Emphasis added.)

Under § 66.0114(1)(a) Wis. Stats., "[a]n action for violation of an ordinance . . . enacted by a city . . . is a civil action. All forfeitures and penalties imposed by an ordinance . . . of the city . . . may be collected in an action in the name of the city. . . . " Significantly, § 66.0114(1)(a) states: "If the action is in municipal court, the procedures under ch. 800 apply *and the procedures under this section do not apply*." (Emphasis added.)

§ 800.095(1) states:

> If the defendant does not comply with the judgment of the court under s. 800.09(1), the court shall issue a warrant to arrest the defendant and bring him before the court or a summons ordering the defendant to appear in court, or both. The defendant may be incarcerated prior to the court appearance.

Haas could lawfully have been jailed under a warrant even *before* the commitment against him was issued. Instead, Judge Michelson issued a summons to Haas to appear in court for an indigency hearing under § 800.095(4). As with the citation, service of the summons is proper under § 800.01(2) per § 800.095(3). Service under § 800.01(2) can be personal service, substitute service, service by publication, or service by mail.

§ 800.095(4)(b) provides:

> If the defendant fails to appear before the court for a hearing under par. (a) [the indigency hearing] . . . the court shall order one of the following: 1. That the defendant be imprisoned until the forfeiture, assessments, surcharge and costs are paid, except that the defendant reduces the amount owed at a rate of at least $ 25 for each day of imprisonment, including imprisonment following arrest but prior to the findings under this subsection, and the maximum period of imprisonment is 90 days.

Michelson lawfully issued a commitment upon Haas' failure to appear at his indigency hearing. Under § 800.095(6), when Michelson ordered Haas' imprisonment under § 800.095(4)(b)1, "the defendant shall be committed to a jail . . . in the county in which the cause of action arose. . . . " Not only was the commitment of Haas legal, his commitment had to be to the Racine county jail.

II. Judge Michelson Is Protected By Absolute Judicial Immunity That Extends To Officers Executing Judicial Process.

Haas' focus is primarily on the actions of the municipal court, with virtually no reference to the County Defendants or the State Defendants. Haas does not raise issues unique to these parties, but rather apparently contends that their liability flows from their attenuated involvement in the actions of the municipal court.

The existence of jurisdiction over Haas having been established, Haas' arguments relating to *per se* liability of Judge Michelson and all of those who acted subsequently are without merit. The so-called "judicial jurisdiction"

exception is not implicated. Haas does not contend that the officers are unable to assert judicial immunity based on their enforcement of the municipal court's orders, but rather that judicial immunity does not apply to Judge Michelson and thus there is nothing to extend to the Officers. Although not developed in the petition, Haas' prior arguments have asserted these officers should have refused to comply with otherwise valid judicial orders as a result of the Constitutional violations he alleges.

Judges enjoy absolute immunity for their judicial acts. *Stern v. Masico*, 262 F.3d 600 (6th Cir. 2001). The same immunity rationale applies to sheriff's deputies, state troopers, and municipal law enforcement officers alike who are executing judicial process. *Cooper v. Parrish*, 203 F.3d 937 (6th Cir. 2001)

> Personal jurisdiction over the complaining party is not considered when determining judicial immunity. [Citations omitted.] 'Where not clearly lacking subject matter jurisdiction, a judge is entitled to immunity even if there was no personal jurisdiction over the complaining party.'

Crenshaw v. Dywan, 34 F.Supp.2d 707 (N.D. In. 1999) *accord*, *John v. Barron*, 897 F.2d 1387, 1392 (7th Cir. 1990). Personal jurisdiction and subject matter jurisdiction are distinct concepts.

The *Crenshaw* court used this example from *Briscoe v. La Hue*, 663 F.2d 713, 722, n. 5 (7th Cir. 1981), to demonstrate the difference between acting in the clear absence of jurisdiction and acting in excess of jurisdiction:

> [I]f a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he

> would be acting in the clear absence of jurisdiction and could not be immune from liability for his action; on the other hand, if a judge of a criminal court should convict a defendant of a nonexistent crime, he would be merely acting in excess of his jurisdiction and would be immune.

Crenshaw, 34 F.Supp.2d at 712. This refutes Haas' contention that Judge Michelson is liable for issuing the commitments. Even if Haas' contentions had merit, Judge Michelson's actions in issuing the commitments would only be in excess of – not outside – the court's jurisdiction.

The Seventh Circuit has called the principle

> fundamental . . . that judges are entitled to absolute immunity from damages for their judicial conduct. [Citations omitted.] Judicial immunity was recognized at common law 'as a device for discouraging collateral attacks and thereby helping to establish appellate procedures as the standard system for correcting judicial error' and to 'protect[] judicial independence by insulating judges from vexatious actions prosecuted by disgruntled litigants.'

Richman v. Sheahan, 270 F.3d 430, 434-435 (7th Cir. 2001).

The *Richman* court also noted that "quasi-judicial" immunity extends to law enforcement officers who are doing no more than is commanded by the judicial process with which they are presented.

> For example, we have recognized absolute immunity for law enforcement officials when the challenged conduct (the mere act of enforcing a foreclosure judgment) was specifically ordered by

> the judge. . . . The source of the plaintiffs' wrong in *Henry v. Farmer City State Bank*, 808 F.2d 1228 (7th Cir. 1986) was the judge's order itself, and we reasoned that a suit against the officers was not the appropriate vehicle for challenging the validity of that order. . . . Under those circumstances, extension of absolute immunity is not primarily to protect the enforcement action performed by the deputies, but rather to protect the judicial decision-making function by discouraging collateral attacks and encouraging appeals.

270 F.3d at 436-437. Haas does not allege unreasonableness, such as excessive force under the Fourth Amendment, in executing the Racine municipal commitments. Rather, he alleges that the judgment and the enforcement thereof was *per se* unlawful.

Haas cannot show the City or County Officers had an independent duty to inquire into the validity of his incarceration. *Thompson v. Duke*, 882 F.2d 1180 (7th Cir. 1989) (county's incarceration of parolee without making independent finding as to validity of incarceration could not serve as basis for Section 1983 liability where the jail staff acted according to their duties under state law and had no duty or authority to determine the validity of the confinement). Seventh Circuit precedent unambiguously precludes recovery against the Officers for their role as temporary custodian of Haas:

> Mr. Maltby's claim against Sheriff Bond fails because there is no evidence that Sheriff Bond was personally involved in the alleged violation. We have stated that "[t]o recover from damages under 42 U.S.C. § 1983, a plaintiff must establish defendant's personal responsibility for the claimed deprivation of the constitutional right.

> However, a defendant's direct participation in the deprivation is not required. An official satisfies the personal responsibility requirement of section 1983 if she acts or fails to act with a deliberate or reckless disregard of plaintiff's constitutional rights, or if the conduct causing the constitutional deprivation occurs at her direction or with her knowledge and consent." *Rascon v. Hardiman,* 803 F.2d 269, 273 (7th Cir. 1986) (quoting *Smith v. Rowe,* 761 F.2d 360 (7th Cir.1985) (citations omitted)). There are no facts presented, however, that evidence any kind of personal involvement by Sheriff Bond in the alleged constitutional violation. Sheriff Bond did not participate in the transaction, in the arrest, the preliminary hearing, or any part of the prosecution of Mr. Maltby. Sheriff Bond was Mr. Maltby's custodian and nothing else. Consequently, there is not sufficient evidence for a jury to hold Sheriff Bond liable for any of Mr. Maltby's alleged constitutional violations.
>
> Sheriff Bond's continued detention of Mr. Maltby after his claim of innocence does not constitute a constitutional violation. *Cf. Baker v. McCollan,* 443 U.S. 137, 145-46, 99 S.Ct. 2689, 2695, 61 L.Ed.2d 433 (1979) (stating that official charged with custody of accused has no independent duty to investigate even repeated claims of innocence by the accused).

Maltby v. Winston, 36 F.3d 548, 559 (7th Cir. 1994). Haas cannot show a Constitutional violation.

Once the City of Racine Officers presented the plaintiff for incarceration, the jail staff was authorized to take him into custody. §§ 302.30 and 302.31, Wis. Stats. Section

1983 does not impose liability for mere enforcement of state laws.

> The plaintiff who wants a judgment against the municipality under [section 1983] must be able to trace the action of the employees who actually injured him to a policy or other action of the municipality itself. When the municipality is acting under compulsion of state or federal law, it is the policy contained in that state or federal law, rather than anything devised or adopted by the municipality, that is responsible for the injury. Apart from this rather formalistic point, our position has the virtue of minimizing the occasions on which federal constitutional law, enforced through section 1983, puts local government at war with state government.

Bethesda Lutheran Homes and Svcs., Inc. v. Leean, 154 F.3d 716 (7th Cir. 1998).

The primacy of state law in this dispute eliminates the relevance of the state of mind of the individual defendants.

> [T]he state of mind of local officials who enforce or comply with state or federal regulations is immaterial to whether the local government is violating the Constitution if the local officials could not act otherwise without violating state or federal law. The spirit, the mindset, the joy or grief of local officials has no consequences for the plaintiffs if these officials have no discretion that they could exercise in the plaintiffs' favor. "[M]unicipal liability under § 1983 attaches where – and only where – a deliberate choice to follow a course of action is made from among various alternatives." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483, 106 S.Ct. 1292, 89

> L.Ed.2d 452 (1986) (plurality opinion); see also *West v. Waymire*, 114 F.3d 646, 651 (7th Cir.1997). That was the case in *Garner*, but not here. The injury of which the plaintiffs are complaining would have occurred regardless of the state of mind of the officials of Jefferson County, unless they had decided to disobey state and federal law that forbade the granting of Wisconsin residency to the individual plaintiffs – and it is the denial of Wisconsin residency that is the source of injury.

Bethesda Lutheran, 154 F.3d at 718-19.

Further, the requirement that local officials must have "a deliberate choice" precludes the imposition of liability on the individual defendants for actions in performing their duties at the direction of a judge.

> The county also is immune because the sheriff, although a non-judicial officer, is performing a ministerial function at the direction of a judge. A ministerial act is one which is 'absolute, certain, and imperative, involving merely the performance of a specific task where the law imposes, prescribes and defines the time, mode and occasion for its performance with such certainty that nothing remains for judgment or discretion.'
>
> *Id.* at 499, 466 N.W.2d at 651 (quoting *Pavlik v. Kinsey*, 81 Wis. 2d 42, 50, 259 N.W.2d 709, 712 (1977)). "[E]ven when a nonjudicial officer performs a ministerial function, but *at the direction of a judge* who is acting in a judicial capacity, that officer is cloaked with absolute immunity from civil liability." *Id.* (emphasis in original). An officer to whom a facially valid warrant is given is not charged with the duty of passing upon its underlying sufficiency. *Chruscicki v. Hinrichs*,

> 197 Wis. 78, 82, 221 N.W. 394, 395 (1928). On the contrary, when an arrest warrant is delivered to an officer, it becomes his duty to execute it. *Id.* It is beyond the scope of a nonjudicial officer's duties to second-guess a judge's order. See *Ford*, 160 Wis. 2d at 501, 466 N.W.2d at 652. As a result, the sheriff had no discretion to question the writ, as [plaintiff] asserts, but instead had a duty to execute it.

Sell v. Thompson & Coates, Ltd., 163 Wis. 2d 765, 773-74, 472 N.W.2d 834 (Ct. App. 1991). Haas cannot show the officers had discretion to refuse to accept custody of the plaintiff. As a result, there is no basis for liability under § 1983.

The Seventh Circuit has repeatedly recognized a sheriff is immune from suit under § 1983 when acting pursuant to a court order:

> As we stated in *Henry v. Farmer City State Bank*, 808 F.2d 1228, 1238-39 (7th Cir. 1986), a Sheriff was immune from suit under § 1983 because he "was at all times acting pursuant to an official court order to enforce a validly entered judgment when he performed the allegedly wrongful acts of which [the defendants] now complain." We concluded that "[t]o allow [the plaintiff] to attack the order collaterally by bringing a § 1983 suit against the Sheriff for damages would require sheriffs . . . who enforce properly entered judgments pursuant to facially valid court orders to act as appellate courts, reviewing the validity of both the enforcement orders and the underlying judgments before proceeding to collect on them." *Id.* at 1239. Such a result is untenable. *Id.* The same rationale applies in Wollin's case. Deputies Gondert and Seidel were acting pursuant to an

> order, issued by a duly appointed officer of the court, to take Wollin into custody if he failed to surrender his firearms and ammunition to the officers upon demand on November 28, 1995, and the deputies could not be expected to review or reject the Commissioner's unequivocal order to arrest Wollin if he failed to surrender his weapons and ammunition upon demand. Accordingly, we refuse to hold, as Wollin wishes, that the deputies should be subject to civil liability for enforcing the Court Commissioner's order.

Wollin v. Gondert, 192 F.3d 616, 624-25 (7th Cir. 1999).

The officers are entitled to absolute judicial immunity when acting pursuant to a judicial order. *Sell*, 163 Wis. 2d at 772 (". . . we conclude that the county is immune from liability because a sheriff has absolute immunity when executing judicial orders").

> We hold that even when a non-judicial officer performs a ministerial function, but at the direction of a judge who is acting in a judicial capacity, that officer is cloaked with absolute immunity from civil liability. We note that this holding has also been reached in the majority of the United States Circuit Courts. *Foster v. Walsh*, 864 F.2d 416 (6th Cir. 1988); *Rogers v. Bruntrager*, 841 F.2d 853 (8th Cir. 1988); Henry *v. Farmer City State Bank*, 808 F.2d 1228 (7th Cir. 1986); *Slotnick v. Garfinkle*, 632 F.2d 163 (1st Cir. 1980); *Williams v. Wood*, 612 F.2d 982 (5th Cir. 1980); *Waits v. McGowan*, 516 F.2d 203 (3d Cir. 1975).
>
> By following the judge's order, the non-judicial officer is acting as a hand of the court. The nature of the function performed is 'judicial.' Therefore, the act is a quasi-judicial act, even though it may

> be non-discretionary. See *Foster v. Walsh*, 864 F.2d at 418.

Ford v. Kenosha County, 160 Wis. 2d 485, 499-500, 466 N.W.2d 646 (1991).

Haas' attempts to recast the nature of the judge's actions are wholly without focus, let alone merit. At page 20 of the petition he states, without any evidentiary or legal basis, that the orders of the municipal court could have "just as easily have been assigned to a court clerk. . . . " This transparent attempt to portray the order as an administrative function is flatly contradicted by the petitioner' claims against the State Defendants. These claims are based on manuals and seminars that instruct municipal judges, not court clerks, to issue commitment orders.

> The State Defendants produced training manuals and held training seminars instructing Wisconsin municipal judges to order the arrest and incarceration of persons defaulting on payment of civil forfeiture debts to a particular municipality.

Petition, p. 3.

Hass then invokes *Supreme Court of Virginia v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 100 S.Ct. 1967 (1980), a case involving judicial rulemaking in a legislative capacity.

> "Disciplinary rules are rules of general application and are statutory in character. They act not on parties litigant but on all those who practice law in Virginia. They do not arise out of a controversy which must be adjudicated, but instead out of a need to regulate conduct for the protection of

> all citizens. It is evident that, in enacting disciplinary rules, the Supreme Court of Virginia is constituted a legislature." 470 F.Supp., at 1064. We agree with this analysis and hence must inquire whether the Virginia Court and its chief justice are immune from suit for acts performed in their legislative capacity.

Id. at 1974. Although he is confident the actions of the municipal court were not taken in a judicial capacity, Haas apparently cannot decide whether the actions were taken in a legislative or an administrative capacity.

III. Haas Was Not Incarcerated For Failure To Pay A Debt And His Incarceration Did Not Violate Wisconsin Law, The 13th Amendment Or 42 U.S.C. § 1994

A. Haas Cannot Show A Violation Of Wisconsin Law

As the district court correctly observed, "plaintiff [Haas] was not incarcerated because he owed a debt; he was incarcerated because he ignored the direct orders of a court." (Pet. App. B, 38a.) The district court also noted that Haas could have appeared before Judge Michelson, and – if Haas demonstrated his inability to pay the forfeitures – the judge could not have ordered Haas committed to the Racine county jail. (Pet. App. B, 39a.) *See also* Wis. Stat. § 800.095(4).

Haas' arguments related to peonage are based on a premise that is not contained within the confines of Haas' petition, let alone established in law. Haas has previously argued a civil forfeiture is "in the nature of a debt founded on express or implied contract", referring to the loose

conception of a "social contract" that forms the basis of society and governmental power in an abstract and philosophical sense. Haas equates imprisonment for the contumacious refusal to pay forfeitures as imprisonment for debt arising out of implied contract.

It is far from clear that the "implied social contract" of Blackstone is the same "implied contract" referenced in the Wisconsin Constitution. A far more reasonable interpretation, particularly in light of the equally axiomatic principles that an individual may be arrested for violating a municipal ordinance and imprisoned for failure to pay a municipal forfeiture, is that the Wisconsin Constitution was not referencing the esoteric concept of a social contract, but rather a commercial contract.

In *State ex rel. Pedersen v. Blessinger*, 56 Wis. 2d 286, 201 N.W.2d 778 (1972), the Wisconsin Supreme Court considered the constitutionality of Wis. Stat. § 973.07, which allowed commitment to the county jail upon nonpayment of fines for a criminal violation. The court upheld the statute on equal protection grounds, provided the person convicted and fined was given an indigency hearing prior to incarceration. Wis. Stat. § 800.095(4), in turn, provided for such an indigency hearing in *municipal court* prior to commitment to the jail for nonpayment of the *civil forfeiture*.

Former Wis. Stat. § 66.12(1)(c) read very similar to § 800.095(4)(b) in that a defendant convicted of a municipal ordinance violation could be imprisoned for up to 90 days for nonpayment of a forfeiture. In *City of West Allis v. State ex rel. Tochalauski*, 67 Wis. 2d 26, 30, 226 N.W.2d 424, 427 (1975), the Wisconsin Supreme Court observed:

> In the present case the defendant does not assert that sec. 66.12(1)(c), Stats., is unconstitutional. Indeed, it is recognized by the defendant that the statute vests in the municipal court the discretion to order confinement and withholds any power to order imprisonment in lieu of the forfeiture as distinguished from the power to order imprisonment as a means of collection. See: *State ex rel. Keefe v. Schmiege* (1947), 251 Wis. 79, 29 N.W.2d 345 (The legislature cannot grant municipalities power to impose imprisonment for violation of ordinances other than as a means of enforcing forfeitures assessed.)

Haas' incarceration was not ordered as a penalty *per se*, but because he refused to pay the forfeiture. In light of *City of West Allis*, it was reasonable for Judge Michelson (and all other municipal judges in this state) to assume that the commitment procedure in § 800.095 was reasonable and constitutional. It was also reasonable for the City and County law enforcement to rely on the validity of the commitment orders issued pursuant to § 800.095.

Haas extends his incredible chain of liability to the Racine police officers who arrested Haas upon Michelson's commitment, in essence stating that, if Michelson was not aware of Haas' theories of liability, then surely the City Officers should have been aware. And, if they were not aware, then surely the Racine county sheriff's deputies who accepted Haas for incarceration pursuant to the committment should have been aware. Throughout this exercise, Haas overlooks quasi-judicial immunity and qualified immunity for the officers.

B. Haas Cannot Show A Violation Of The Thirteenth Amendment Or 42 U.S.C. § 1994

The Thirteenth Amendment has been interpreted in the municipal ordinance context as follows:

> As a matter of history, it is well known that the amendment was adopted with the object of prohibiting slavery in the states, and not to prohibit such forms of service as had always been treated as lawful and proper elsewhere. . . . The word 'crime' was used in its most comprehensive sense, as prohibiting such involuntary servitude as is not inflicted as a punishment for an offense against the law; . . .

City of Chicago v. Coleman, 254 Ill. 338, 341-342, 98 N.E. 521, 523 (1912) (citation omitted).

Haas was "jailed only because of his own obstinance." (Pet. App. B, 40a) Haas was not incarcerated due to any indebtedness such that he was in a state of "peonage." As the Washington Supreme Court observed in *In re Johnson*, 71 Wash. 2d 245, 253, 427 P.2d 968, 973 (1967):

> [t]he legislative purpose of the Anti-Peonage Act was to implement the Thirteenth Amendment by striking down all laws and usages in the states and territories which attempted to maintain and enforce involuntary service of any person as a peon, in liquidation of any debt.

The district court and Seventh Circuit carefully distinguished Haas' involuntary servitude and peonage cases. Haas' repeated "hard labor" rhetoric is a convenient red herring. Even Haas does not contend that his short stay in police custody resulted in his forced performance of actual physical labor, arduous or otherwise. Prior

decisions involving mentally retarded men forced to work and live in squalor without pay or men captured and forced to work "are a far cry from the facts of the case before [the District Court]." (Pet. App. B, 39a.)

Haas maintains that these other cases are indistinguishable from his situation because money used to pay a debt represents a certain quantum of his labor. This argument is apparently so obvious that he supplies no authority to support it. If the payment of money is legally equivalent to imprisonment at hard labor, then the payment of money is a remedy available only as a criminal sanction. To accept Haas' logic would mean the end of the civil justice system.

IV. The Rooker-Feldman Doctrine Deprived The Federal Court Of Jurisdiction.

A. The Presence Of Subject Matter Jurisdiction Eliminates The Duty Of A Federal Court To Collaterally Review The Actions Of The Municipal Court

Haas' arguments are based on the assumption that the municipal court does not have subject matter jurisdiction. That assumption is completely erroneous. The decisions cited by Haas in support of collateral review are simply inapplicable, as there is no basis to conclude that subject matter jurisdiction was lacking in the municipal court.

Haas states:

> Thus, challenging the enforcement action of the state – or any other action by a judge *that does not implicate the policies behind judicial immunity* – is not barred by Rooker-Feldman.

Petition, page 5 (emphasis added.) Even within the context of *Rooker-Feldman*, Haas is unable to acknowledge the municipal court has subject matter jurisdiction over municipal actions.

The discussion of federal power in *Kalb v. Feuerstein*, 308 U.S. 433, 60 S.Ct. 343 (1940), illustrates the absence of support for Haas' position.

> It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack. But Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally.

Id. at 346.

As with his arguments regarding the absence of judicial immunity, Haas' complaints involve personal jurisdiction, not subject matter jurisdiction. He denies that judgment was properly entered because he contends he did not have to appear before the Municipal Court, thereby alleging a lack of personal jurisdiction. That he admits his guilt before this Court is of no consequence. Judgment was entered based on failure to appear, not a plea of guilty. Federal courts do not have original jurisdiction over municipal court proceedings.

It is disingenuous rhetoric to suggest the Seventh Circuit's decision has immunized state actors who violate the civil rights of citizens. It is Haas that seeks to have this court shield him from the payment of civil forfeitures

and codify his world view as determinative of municipal court jurisdiction.

B. Haas' Claims Are Inextricably Intertwined With The Municipal Court and State Court Judgments

As discussed in *Wollin, supra*, challenges to a conviction or a sentence are not cognizable under § 1983. *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364 (1994). In *Heck*, the Supreme Court determined that because § 1983 creates a "species of tort liability" it was not possible to attack the lawfulness of a conviction through § 1983, as a tort action was not a proper vehicle for challenging a conviction.

> We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983. *Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can*

> *demonstrate that the conviction or sentence has already been invalidated.*

Id. at 2372-73 (emphasis added).

On April 30, 2002, the Wisconsin Supreme Court ended the plaintiff's habeas corpus challenge to his convictions and sentences. *State of Wisconsin ex rel. Gerald Haas v. William McReynolds*, 2002 WI 43, 252 Wis. 2d 133, 643 N.W.2d 771. Having failed to reverse his convictions and sentences, Haas is unable to prove that his convictions or sentences have been reversed. The relief sought here "would necessarily imply the invalidity of his conviction[s] or sentence[s]" and thus cannot be granted.

The *Younger* doctrine commands that federal courts should refrain from enjoining state criminal prosecutions. *Younger v. Harris,* 401 U.S. 37, 91 S.Ct. 746 (1971). This doctrine is not limited to criminal convictions.

> The doctrine has been extended to apply to quasi-criminal proceedings of the sort involved here [involving municipal ordinances] and to civil proceedings which implicate certain important state interests. *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 106 S.Ct. 2718, 2722-23, 91 L.Ed.2d 512 (1986); *Middlesex County Ethics Committee v. Garden State Bar Ass'n,* 457 U.S. 423, 432, 102 S.Ct. 2515, 2521, 73 L.Ed.2d 116 (1982); *Brunken,* 807 F.2d at 1330.

Jacobsen v. Village of Northbrook, 824 F.2d 567, 569 (7th Cir. 1987).

The District Court and the Seventh Circuit applied the related doctrine known as *Rooker-Feldman*

> In *Rooker,* the Supreme Court acknowledged that the plaintiff claimed to be injured by the state court's treatment of her case, not simply by the defendant: "The grounds advanced for resorting to the [federal] District Court are that the [state] *judgment* was rendered and affirmed in contravention of the contract clause of the Constitution of the United States . . . and the due process of law and equal protection clauses of the Fourteenth Amendment. . . ." 263 U.S. at 414-15, 44 S.Ct. at 150 (emphasis added). The *Rooker* Court held, however, that no matter how wrongful a state court decision may have been, a federal district court had no jurisdiction to reverse or modify it. *Id.* at 415-16, 44 S.Ct. at 150. The *Feldman* Court similarly held that federal district courts "do not have jurisdiction . . . over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the *state court's action* was unconstitutional." 460 U.S. at 486, 103 S.Ct. at 1317 (emphasis added). Thus *Rooker* and *Feldman* both proclaimed that if a federal plaintiff claims injury at the hands of a state court, due to its decision in a civil case, federal district courts have no jurisdiction to hear the case; and the only appeal is to the Supreme Court after a final judgment by the highest state court.

Gary v. Geils, 82 F.3d 1362, 1366 (7th Cir. 1996). Although often phrased in terms of the "judgment" of the state court, *Rooker-Feldman* is not limited to the single action of entering judgment. Rather, the doctrine applies to any actions taken within a judicial capacity in a civil case.

> In *Leaf,* 979 F.2d at 596, we noted the significance of this language from *Feldman.* We elaborated that if the injury alleged by the federal plaintiff was due to the "nonjudicial" actions of a state court, i.e., if the injury did not "arise out of judicial proceedings," lower federal courts could have jurisdiction: "A district court . . . may have jurisdiction when the litigant's challenge is not directed at a state court's judicial proceedings but rather involves a state court's administrative, legislative, or ministerial actions." *Id.*

Gary, 82 F.3d at 1366, FN 6.

As correctly noted by both the District Court and the Seventh Circuit, Haas' claims are on all fours with *Homola v. McNamara*, 59 F.3d 647 (7th Cir. 1995). Haas does not mention *Homola* in his petition, nor did he mention the case before the Seventh Circuit, an omission that was noted by the Appellate Court. (Pet. App. A, 9a.) As with his decision to avoid discussion of the municipal court's statutory authority, Haas' *Rooker-Feldman* arguments are symptomatic of blind advocacy and demonstrate the lack of merit in his claims.

Haas attempts to compartmentalize the actions of the Municipal Court into three self-serving categories: The initial decisions regarding citation procedure, the judgment that he violated the municipal ordinance (which Haas does not contest), and the issuance of the commitments. Haas believes these events are sufficiently connected such that the initial jurisdictional defects taints the entire process, thus giving rise to his constitutional claims, but does not believe this connection is sufficient to preclude relief under *Rooker-Feldman.*

> The *Rooker-Feldman* doctrine would not bar federal review if, during the state court proceedings, plaintiff had no reasonable opportunity to raise the claims that he now raises. *Brokaw v. Weaver,* 305 F.3d 660, 668 (7th Cir.2002). However, plaintiff could have raised the claims he raises here in municipal court, *see* Wis. Stat. §§ 800.02(1), 800.04, 800.095, 800.115(2), or he could have appealed the municipal court judgments, *id.* § 800.14. Indeed, in at least one instance plaintiff did, in fact, raise some of his present claims in state court. *State of Wis. ex rel. Haas v. McReynolds,* 252 Wis. 2d 133, 136-39, 142-44, 643 N.W.2d 771 (2002) (recounting history of prior proceedings and declining to reach the merits of plaintiff's claims).

(Pet. App. B, 20a-21a.)

The irony of Haas' claims should not be lost on this court. He contends he was denied due process as a result of his own conscious decision not to participate in the process.

> Orders issued without an opportunity for litigation are understood as open to limited collateral attack. The order to hale Homola into court in the contempt proceedings, by contrast, was issued after an opportunity to be heard. *Homola spurned that opportunity – that is why he had to be dragged into court – but one who turns his back on the original tribunal does not help himself to the opportunity to litigate elsewhere.*

Homola, 59 F.3d at 651 (emphasis added).

In *Nesses v. Shepard*, 68 F.3d 1003 (7th Cir. 1995), the Seventh Circuit noted that the *Rooker-Feldman* doctrine

"ought to be confined to cases in which the defendant in the state court is seeking to undo a remedial order of some sort (ordinarily a criminal conviction or an injunction). *Id.* at 1004. This statement eviscerates Haas' attempts to parcel out the issuance of commitments, which is properly categorized as a remedial action and thus precisely the type of *action* to which *Rooker-Feldman* applies. Sanctions imposed under § 800.095 are remedial.

CONCLUSION

The Petitioner's claims are based on a distortion of state and federal law. The constitutional prohibitions against peonage and involuntary servitude are not implicated by the issuance and enforcement of a default judgment in municipal court for the failure to appear. The Seventh Circuit's decision did not create additional governmental authority or sanction improper practices. The petition seeks a radical restructuring of governmental authority in line with the Petitioner's view of the role of government. Based on the above argument and authorities, it is respectfully requested that this Court deny the petition.

Respectfully submitted on the 9th day of December, 2004.

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